



U.S. Citizenship
and Immigration
Services

MM

[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date:

OCT 26 2004

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Cindy N. Lomeny for

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The application was denied by the Director, Texas Service Center, on July 17, 2002. The applicant filed a late appeal that was rejected by the Administrative Appeals Office (AAO) on April 17, 2003. The matter is now before the AAO on a Motion to Reopen. The motion will be dismissed, and the previous decisions by the AAO and service center directors will be affirmed.

The applicant is a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director, Texas Service Center, denied the application because the applicant failed to establish he was eligible for late registration. The AAO director rejected the appeal, because the applicant did not file the appeal within the allotted timeframe.

On motion, the applicant asks that his case be re-opened and that he be given "the opportunity to be legal in this country in which [with] a lot of difficulty [he has] lived here without having a better opportunity in employment and also to pay [his] taxes [sic]." The applicant states that because he lacked employment and feared deportation he did not apply during the initial registration period. The applicant also submits additional evidence relating to his continuous residence and continuous physical presence in the United States.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states, in pertinent part:

Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

Furthermore, a motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

8 C.F.R. § 103.5(a)(4) states that a motion that does not meet applicable requirements shall be dismissed.

Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b).

The AAO director's decision, dated April 17, 2003, clearly advised the applicant that any motion to reopen or reconsider must be properly filed within thirty days after service of the decision. 8 C.F.R. § 103.5(a)(1)(i). Coupled with three days for mailing, the motion, in this case, should have been filed on or before May 20, 2003. The motion, however, was received at the Texas Service Center on June 3, 2003.

Based upon the applicant's failure to file a timely motion, the motion will be dismissed.

It is noted that the documentation submitted on motion pertains to the applicant's continuous residence and continuous physical presence in the United States during the requisite periods, and not to the reason for denial identified by the service center director, as to whether the applicant is eligible for late registration under the provisions of 8 C.F.R. § 244.2(f)(2). On motion, the applicant does not provide any new evidence pertaining to his eligibility for late registration. It is noted that on the Form I-765, Application for Employment

Authorization, the applicant indicated both his manner of entry into the United States and his current immigration status as entry without inspection (EWI), while on the Form I-821, Application for Temporary Protected Status, the applicant indicated that he entered the United States without inspection, and listed his current immigration status as "F-1," nonimmigrant student. The applicant, however, presented no evidence to substantiate that he had been granted any type of nonimmigrant status.

The applicant has not asserted any new facts to be provided at the reopened proceeding. The applicant has not submitted any evidence on motion to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). For these reasons, the submissions do not meet the requirements of a motion to reopen, and the motion must be denied.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden

ORDER: The motion is dismissed, and the previous decisions by the AAO and service center directors are affirmed.